

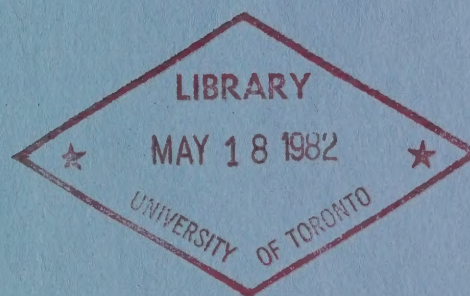
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NATIONAL ENERGY BOARD
REASONS FOR DECISION

In the Matter of an Application under
the National Energy Board Act

of



TransCanada PipeLines Limited

**For The Taking of
Additional Lands**

April 1982

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Ce rapport est
publié séparément
dans les deux
langues officielles

(i)

NATIONAL ENERGY BOARD

In the Matter of an application by TransCanada PipeLines Limited for authority to take additional lands required for the construction, maintenance and operation of a pipeline pursuant to Section 74 of the National Energy Board Act.

HEARD AT the City of North Bay, Ontario, on 30 March 1982.

B E F O R E:

J.R. Hardie) as Presiding Member delegated by the Board to hear and decide this application and to make all orders incidental thereto, in accordance with section 13 of the National Energy Board Act.
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APPEARANCES:

Samuel R. Rickett) TransCanada PipeLines Limited
Walter J. Palmer)
William D. Bradford) Himself (Tract No. NB/0-1-27)
Louise Meagher) National Energy Board

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(iii)

ABBREVIATIONS

NAMES

"the Act"	-	National Energy Board Act
"the Board"	-	National Energy Board
"TransCanada" or "the Applicant"	-	TransCanada PipeLines Limited

TERMS

"m"	-	metre(s)
"km"	-	kilometre(s)

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CHAPTER 1

BACKGROUND AND APPLICATION

On 15 January 1982 the National Energy Board ("the Board") issued Certificate of Public Convenience and Necessity No. GC-69 to TransCanada PipeLines Limited authorizing the construction and operation of a gas pipeline extending from Compressor Station No. 116 at North Bay, to the Ottawa Lateral - Montreal Line Junction near Morrisburg, all in the Province of Ontario.

Section 73 of the National Energy Board Act ("the Act") limits the width of the right-of-way that any company that has received a certificate from the Board may take, without the consent of the owner, to 18.29 metre ("m").

Where a company needs more than an 18.29 m wide permanent or temporary right-of-way it may, under section 74 of the Act, apply to the Board for authority to take, without the consent of the owner, the additional lands required. These lands must be required for "the efficient construction, maintenance or operation of a pipeline or for constructing or taking any works or measures ordered by the Board."

Any order issued by the Board in the exercise of its powers under section 74 of the Act may be made subject to such terms and conditions as the Board deems expedient. The issue of payment for lands expropriated by a pipeline company is not, however, decided by the Board. In the Province of Ontario, the matter of compensation is determined by a county court judge as arbitrator under the provisions of the Railway Act.

TransCanada made the present application, dated 15 February 1982, as amended, under section 74 of the Act, in respect of certain properties located within the "Nipissing Portion" of the North Bay Shortcut, to be traversed by the pipeline between Compressor Station No. 116 and a point 665 m east of the border between the District of Nipissing and the County of Renfrew. The lands to be taken fall into two categories: permanent right-of-way and temporary right-of-way.

The total distance of the "Nipissing Portion" is 92.8 kilometres ("km"). Originally 6 different public bodies and 98 different landowners were affected by the land requirements for construction within this section. Thereafter, TransCanada, by its letter dated 24 February 1982, updated its land requirements to include one additional landowner thereby affecting a total of 99 different private landowners. The Applicant, in the direct testimony of Leslie Colin Gillespie, revised its land requirements to include 101 different private landowners, due to a minor diversion.

The said application by TransCanada, as amended, was made with respect to 11 properties affecting 9 individual landowners. Thereafter, TransCanada updated its land requirements to include 12 properties and 10 individual landowners which was further revised and reduced to 1 property affecting 1 landowner, for permanent right-of-way only, prior to the commencement of the hearing.

The hearing was held in North Bay, Ontario on 30 March 1982.

CHAPTER 2

NOTICE OF HEARING, INTERVENTIONS AND APPEARANCES

NOTICE OF HEARING

The Board is satisfied on the basis of the affidavit evidence filed by TransCanada that the owner of the lands concerned, as identified by TransCanada, was served personally more than 21 days before the hearing with: a true copy of the Board's Notice of Hearing, Order No. MH-3-82; a true copy of the Board's Memorandum to all Interested Parties dated 18 February 1982 concerning hearing procedures; a true copy of the application; a general route map of the pipeline between Compressor Station No. 116 and a point 665 metres east of the border between the District of Nipissing and the County of Renfrew (the "Nipissing Portion"); and a plan, site-specific as to the particular lands of the landowner, showing the location of the proposed pipeline right-of-way including the location of the additional lands required.

INTERVENTIONS

The Board received two written interventions prior to the hearing. Mr. Rodger B. Bowness filed on behalf of Mr. W.D. Bradford (Tract No. NB/O-1-27) and Mr. R. McNutt wrote to the Board on his own behalf.

It should be noted that Mr. R. McNutt did not own lands affected by the application, nor did he appear at the hearing.

APPEARANCES

Mr. W.D. Bradford (Tract No. NB/O-1-27) appeared on his own behalf primarily to object to the development constraints imposed upon his property by the routing of the pipeline.

CHAPTER 3

LAND REQUIREMENTS

GENERAL EVIDENCE OF THE APPLICANT

TransCanada presented general evidence as to its requirements for additional permanent right-of-way. TransCanada also presented specific evidence for the property on which it was applying for additional lands.

Permanent Right-of-Way

At the hearing, TransCanada stated that it was applying for leave to take, without the consent of the owner, an additional permanent easement having a width of 11.712 m for a total pipeline right-of-way width of 30 m as set out in Appendix 1. The Applicant indicated that a 30 m wide right-of-way was required for the efficient and safe construction, maintenance and operation of large diameter pipelines.

TransCanada indicated, in its direct evidence, that pipeline construction, a specialized form of linear construction, has been developed to a high degree of efficiency by using production line techniques. The Applicant went into great detail to explain the series of activities on the right-of-way, namely: surveying and flagging, clearing, grading, stringing, bending, trenching, welding, lowering, backfilling and clean-up and restoration.

From its general description of the pipeline construction, the Applicant highlighted certain activities in justifying its requirement for a 30 m wide permanent right-of-way, namely: stockpiling of rock, topsoil and subsoil; access; automatic

welding process and travelling space during construction.

TransCanada stated that the proposed pipeline route traverses extensive sections of rocky terrain in the District of Nipissing and in Renfrew and Lanark Counties and the preparation of the right-of-way in these areas results in large quantities of rock being excavated and stored on the right-of-way. The Applicant further stated that in agricultural areas, the preparation of the right-of-way includes the stripping and stockpiling of topsoil prior to trenching.

TransCanada stated that conventional pipeline construction procedures require a layout of right-of-way as illustrated in Appendix 1. The Applicant indicated that as part of the North Bay Shortcut Facilities Application it had undertaken to make every effort to confine construction activities, including the piling of spoil, to within the limits of the right-of-way and, by leaving a 0.9 m gap between them, to ensure that subsoil and topsoil spoil piles would not be intermixed.

From its direct evidence presented at the hearing, TransCanada indicated that, at the request of the Ministry of Natural Resources and on the advice of TransCanada's environmental consultant, every effort was made to minimize the creation of new access roads into areas which were previously inaccessible. The Applicant noted that, whereas previous easements included the right of access to the right-of-way over the lands of the owner, easements in effect on the North Bay Shortcut would limit access along the right-of-way except in the case of emergencies. It would, therefore, be important that the right-of-way be properly graded for continuous access purposes.

TransCanada testified that for the construction of the North Bay Shortcut it would utilize an automatic welding process whereby a series of successive weld deposits would be carried out to form a continuous pipeline. The Applicant stated that with the automatic welding process, in addition to the normal movement of equipment along the working side of the right-of-way during the welding operation, it would be necessary, periodically, for two welding stations to pass each other, as illustrated in Appendix 2.

TransCanada explained that the maximum need for right-of-way width on the working side of the pipeline occurs during the welding and lowering-in activities. At this time it would be necessary for equipment such as dump trucks, service, inspection and transport vehicles, personnel buses and fuel trucks to be able to pass the welding and lowering-in equipment.

TransCanada, in its direct evidence, further stated that a 30 m wide right-of-way would be required not only for the initial construction of the pipeline but also whenever major maintenance and replacement activities take place. In order to ensure the security of the pipeline in areas subject to erosion and slope instability, it would also be necessary to maintain and repair the right-of-way. From time to time, it might also be necessary to repair or replace parts of the pipeline because of corrosion, damage or loss of cover. Pipe replacements would also be required because of road, highway or drainage ditch modifications or because of an increase in population density adjacent to the right-of-way thereby requiring heavier wall pipe.

The Applicant explained that effecting a pipe replacement involves operations substantially similar to the construction of the initial pipeline, subject to a number of additional complications. Different excavation procedures must be undertaken in order not to damage the existing pipeline. Additional spoil would be created as it would be necessary not only to dig to the bottom of the pipeline but also to dig underneath the pipeline. TransCanada also stated that repairs and replacements may have to be effected quickly, without taking time to acquire new temporary working rights, to undertake the necessary construction activities.

As a final argument TransCanada indicated that it is important to retain permanent rights over an adequate strip of land on either side of its pipeline to ensure that construction activities do not occur too close to the pipeline. The Applicant stated that with the increase of urban development in Canada, it has experienced many circumstances where subdivisions have been developed around its pipeline.

LANDOWNER'S EVIDENCE AND APPLICANT'S POSITION

TransCanada proceeded with respect to only one parcel of land (Tract No. NB/0-1-27) owned by Mr. William D. Bradford, who appeared and made representation at the hearing.

Mr. Bradford's submission consisted mainly in expounding on the points he had raised in his "Statement of Facts", which formed part of his filed intervention. This Statement raised six concerns as follows:

1. The construction of the pipeline through the property would adversely affect proposed future development of the land as an Estate subdivision and/or Golf Course.

2. The proposed right-of-way would result in loss of revenue to Mr. Bradford, which revenue was anticipated by the alternative use of the property as a gravel pit.
3. The cut line, increased public access and noise disruptions caused by low level aircraft inspection would adversely affect the lands from an aesthetic perspective.
4. The bend in the line occurring on the property would increase the likelihood of accident.
5. The landowner's rights to the land would be diminished due to the Applicant's rights of ingress and egress.
6. The expropriation of additional lands augments the above-outlined adverse effects.

In addition, Mr. Bradford stressed that TransCanada had not adequately shown that it would be impossible to construct within the 18 m allowed under the Act. He felt that since his property was, in his evaluation, 90 percent flat, the Applicant should be able to construct in a more limited space. Mr. Bradford did not present any evidence to support this view.

TransCanada stated that with respect to the Bradford property, while there was no topsoil to be segregated, the width of right-of-way requested was required to store rocks and boulders removed from the pipeline right-of-way trench.

On cross-examination by Board Counsel it became apparent that the proposed estate subdivision had not progressed beyond a conceptual stage. TransCanada, through the testimony of Mr. Michael Durnin, explained that subdivisions have been safely developed

around its pipeline in many areas but that it is important for TransCanada to retain permanent easement rights over an adequate strip of land on either side of its pipeline in order to safely incorporate the pipeline into these developments and to provide sufficient work room to carry out future maintenance.

During the hearing, no evidence was presented with respect to the possibility of the lands being developed as a golf course.

With regard to the development of a gravel pit, it would appear that an application for rezoning to "extractive" for approximately 32.38 hectares of the property in question is presently being considered by the North Bay City Council. However, on being questioned by TransCanada, Mr. Bradford answered that he had not undertaken any detailed studies of the type or amount of gravel resources on the subject lands or ascertained what the demand for gravel might be. He agreed that his concern over the loss of gravel resources could be resolved with adequate compensation.

TransCanada, in its examination in chief, stated that in its opinion, the cutting of the full width of the right-of-way would not significantly differ from the cutting that would have to be done for any of the development proposals planned by the landowner.

In answer to Mr. Bradford's concerns about motorcycles and skidoos traversing his property, TransCanada stated that its practice is to attempt to control unauthorized use of the right-of-way by collaborating with the landowner and the Ministry

of Natural Resources to erect fences or sign posts. TransCanada also indicated that it was its policy to increase the height of patrol where aircraft inspection might disturb any activities on the ground, particularly in subdivisions or residential areas.

With regards to Mr. Bradford's worry about the integrity of pipe bends, TransCanada stated that a bend is no more susceptible to failure than any other part of the system.

TransCanada, in dealing with the question of ingress and egress, indicated that the terms in the easement documents proposed to be used for the North Bay Shortcut would confine access to the right-of-way itself, except in the case of emergencies.

CHAPTER 4

DECISION OF THE BOARD

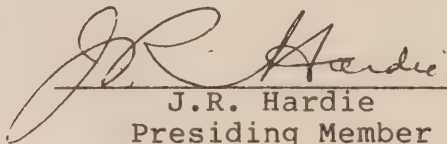
The Board views with reluctance the taking of additional lands without the consent of the owners. The Board recognizes, however, that sometimes expropriations may be necessary in the public interest.

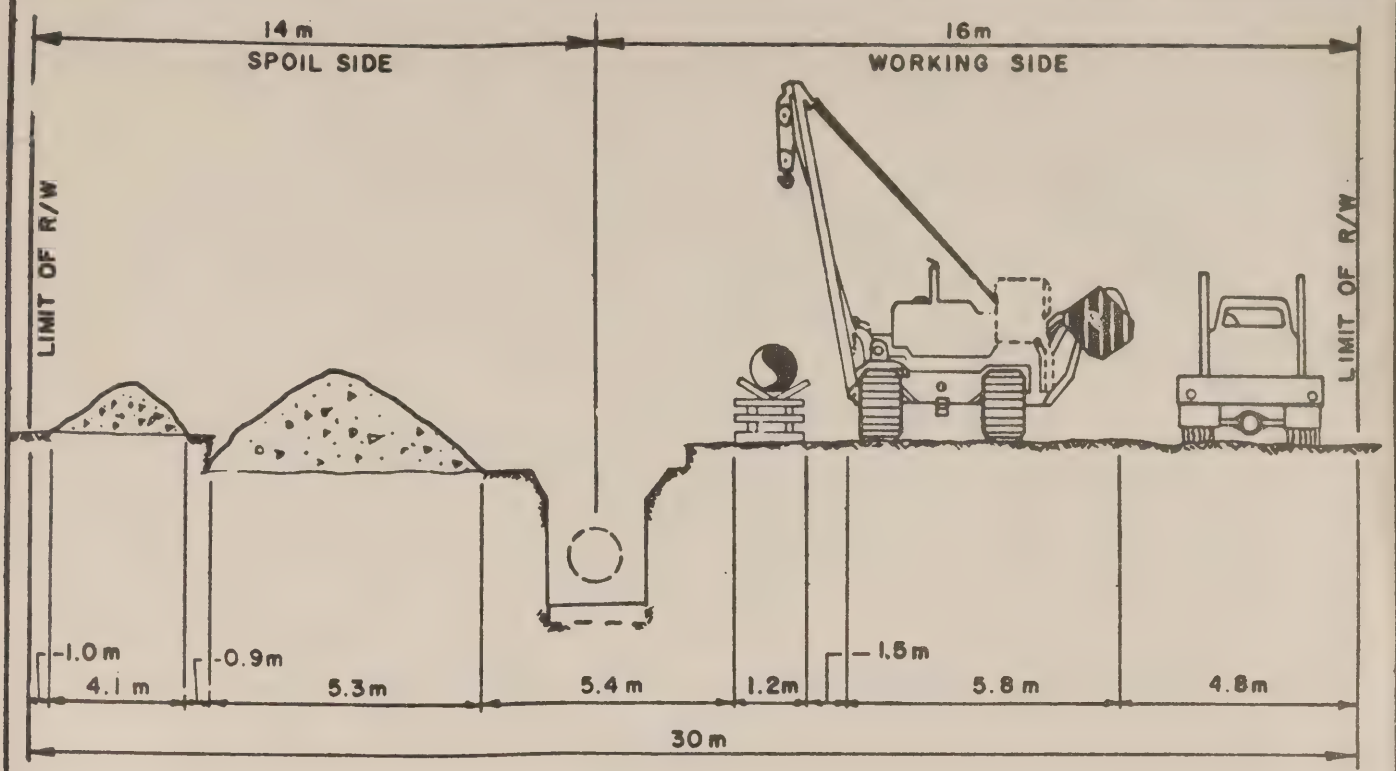
The Board accepts the evidence presented by TransCanada that it requires a 30 m wide permanent right-of-way for the efficient construction, maintenance and operation of its pipeline.
Mr. William D. Bradford (Tract No. NB/O-1-27)

The Board is satisfied that the land being requested by TransCanada is required for the efficient construction, maintenance and operation of the pipeline and so finds. The Board is not convinced, from the evidence presented by Mr. Bradford, that the additional permanent 11.712 m right-of-way would substantially affect any of his three land development proposals. It is the opinion of the Board that the conceptual nature of each of the proposed developments is such that the 30 m wide pipeline easement, as requested by TransCanada, could be incorporated into the ultimate realization of the landowner's plans.

The Board authorizes the taking of these additional lands, however, it is hopeful that the Applicant will make further attempts at negotiating a satisfactory settlement with this landowner.

The Board orders accordingly.


J.R. Hardie
Presiding Member



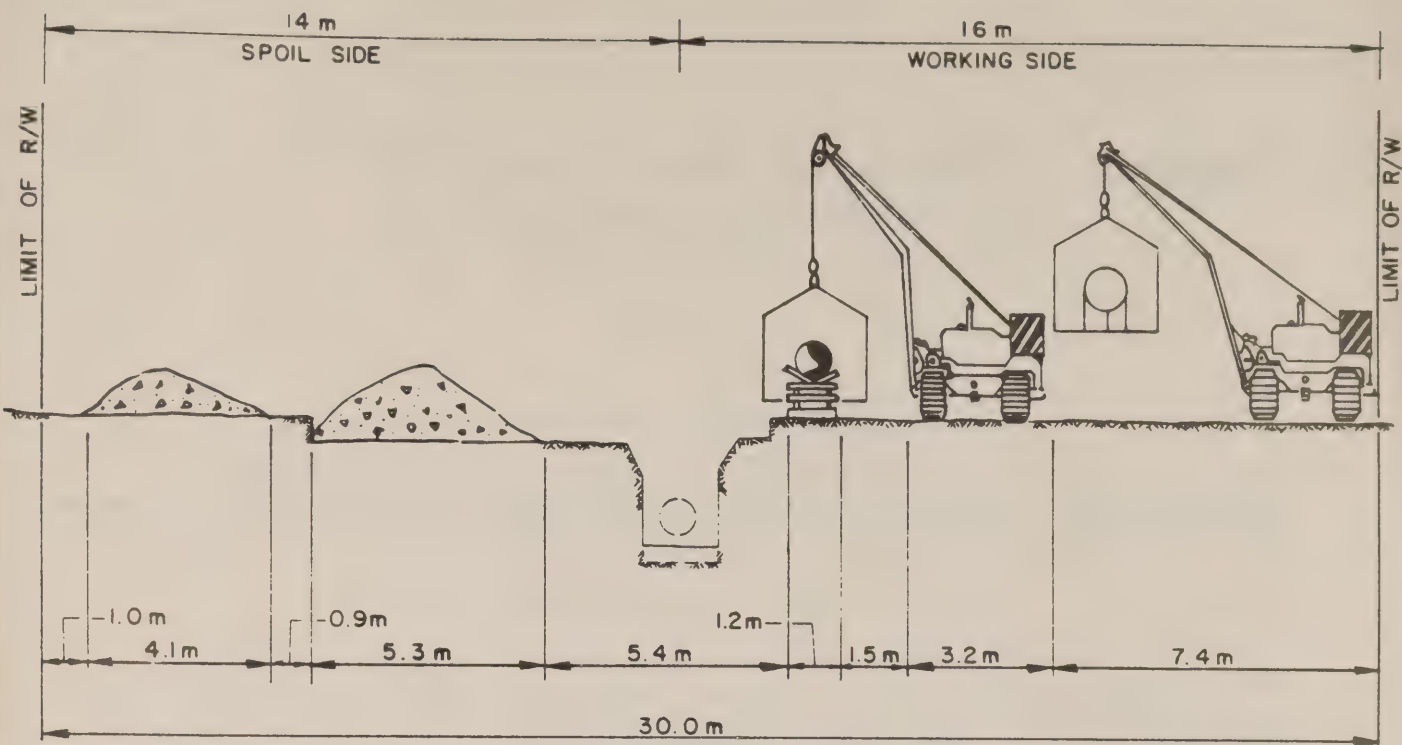
APPENDIX 1



TransCanada Pipelines Toronto Ontario

RIGHT OF WAY REQUIREMENTS
NORTH BAY SHORTCUT

No.	Date	Description	By	Ckd	App.
Revisions					
Dr.	O. L.	Date	Approved		
Ckd		Date	----- Manager		
Dr'g Sup'r		Des.	ASK - 18 - 334		



APPENDIX 2



TransCanada PipeLines

Toronto Ontario

RIGHT OF WAY REQUIREMENTS NORTH BAY SHORTCUT

No.	Date	Description	By	Ckd	App.
Revisions					
Dr.	O. L.	Date	Approved		
Ckd		Date	-----		
Dr'g	Sup'v'r	Des.	Manager		
			ASK-18-338		

NATIONAL ENERGY BOARD ACT
SECTIONS 73, 74 AND 75

APPENDIX 3

Extent of Lands that may be Taken

73. Subject to section 74, the lands that may, without the consent of the owner, be taken for the right-of-way of a pipeline shall not exceed sixty feet in breadth. 1959, c. 46, s. 73.

Leave to Take Additional Lands

74. (1) Where a company at any time requires more ample space than it possesses or may take under section 73, for the efficient construction, maintenance or operation of a pipeline or for constructing or taking any works or measures ordered by the Board, it may apply to the Board for authority to take, without the consent of the owner, the additional lands required for such purposes.

(2) The Board shall set a time for the hearing of the application which shall be sufficient to permit at least twenty-one days notice thereof to be given by the company to the owners or possessors of the additional lands required, and the company shall give notice thereof accordingly and shall, upon such hearing, furnish to the Board copies of such notices, with affidavits of the service thereof.

(3) The company, upon the application, shall also furnish to the Board such plans, profiles and books of reference and additional information as the Board may require.

(4) After the time stated in such notices, and the hearing of such parties interested as may appear, the Board may, in its discretion and upon such terms and conditions as it deems expedient, authorize in writing the taking for the said purposes of the whole or any portion of the lands applied for.

(5) Copies of the authorization of the Board and of the plan, profile and book of reference, certified as such by the Secretary of the Board, shall be deposited with the registrars of deeds of the districts or counties in which the lands are situated. 1959, c. 46, s. 74; 1960-61, c. 52, s. 11.

Purchase and Conveyance; Expropriation

75. (1) Sections 145 to 184 and 186 of the Railway Act, in so far as they are reasonably applicable and not inconsistent with this Act, apply mutatis mutandis to companies and their works and undertakings. R.S., c. N-6, s. 75; R.S., c. 27 (1st Supp.), s. 21.

